

**THE IMPACT OF CULTURE ON THE RIGHT OF WOMEN TO  
PARTICIPATE IN PUBLIC AFFAIRS: A COMPARATIVE ANALYSIS  
OF SWAZI AND BUGANDA KINGDOMS**

**(A DISSERTATION SUBMITTED IN PARTIAL FULFILMENT OF THE  
REQUIREMENTS OF THE DEGREE LLM (HUMAN RIGHTS AND  
DEMOCRATISATION IN AFRICA)**

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## **DECLARATION**

I, ISAAC MPUSANG MATLAWE, declare that to the best of my knowledge this dissertation is my original work and that where other works have been quoted, it is clearly indicated and acknowledged. This dissertation has never been submitted to this, or any other University for the award of a degree.

.....  
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**SIGNED \_\_\_\_\_**

## **CERTIFICATION**

I, SYLVIA TAMALE, hereby certify that this study titled “The Impact of Culture on the Right of Women to Participate in Public Affairs: A Comparative Analysis of Swazi and Buganda Kingdoms” is the result of original research carried out by ISAAC MPUSANG MATLAWE under my supervision at the Faculty of Law, Makerere University.

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## **DEDICATIONS**

To my family, especially my aunt SUZAN SEHEMO who stood by me through thick and thin. Lest I forget my girl friend NEO CYNTHIA NKWANE who has been a source of inspiration throughout the trying times. Thanks for those calls “Babe”.

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## **ABBREVIATIONS**

ACHPR	African Charter on Human and Peoples' Rights
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
HUMARAS	Human Rights Association of Swaziland
ICCPR	International Covenant on Civil and Political Rights
KY	Kabaka Yeka
LEGCO	Legislative Council
OAU	Organisation of African Unity
SNC	Swazi National Council
UCRC	Ugandan Constitutional Review Commission
UDHR	Universal Declaration of Human Rights
UN	United Nations
UN GA	United Nations General Assembly

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# CHAPTER 1

## 1.0 INTRODUCTION

### 1.1 Historical background of the kingdoms

At independence in 1968, Swaziland adopted a constitution that provided for fundamental rights and freedoms.<sup>1</sup> However in 1973, King Sobhuza II suspended the Constitution including the bill of rights. He blamed the constitution for having failed to provide the machinery for good governance, the maintenance of peace and order, for causing unrest, insecurity and the importation of undesirable political practices alien to the Swazi society.<sup>2</sup> Since then Swaziland has been governed by the repealed constitution of 1968, portions of which were reinstated by the King's Proclamation to the nation of 12 April 1973. However, recently there has been a movement towards democratisation and constitutionalism in Swaziland.<sup>3</sup>

The Buganda Kingdom in Uganda is a traditional system provided for in the Constitution of Uganda.<sup>4</sup> The Kingdom has its own Constitution, which was previously provided for under Schedule 1 of the 1962 Constitution of Uganda. However, the Kingdom was abolished by the 1967 Constitution under President Milton Obote.<sup>5</sup> It was reinstated in 1993, after the coming into power of the National Resistance Movement (NRM) administration.<sup>6</sup> This culminated in the coronation of Ronald Muwenda Mutebi as the 36<sup>th</sup> king of the Buganda kingdom.<sup>7</sup>

The two kingdoms have a minimal number of women representatives in their political structures. In Swaziland, for instance, in 1996 there were only two women in the 65-member House of Assembly, six women in the 30-member Senate and no women in the

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<sup>1</sup> See chapter II of the Constitution of the Kingdom of Swaziland Act 50/1968, which came into effect on 6 September 1968.

<sup>2</sup> See King's Proclamation of 12 April 1973.

<sup>3</sup> See the draft Constitution of the Kingdom of Swaziland, released by King Mswati III on 31 May 2003.

<sup>4</sup> Chapter 16 of the Constitution of the Republic of Uganda, 1995.

<sup>5</sup> Art 118 of the 1967 Constitution.

<sup>6</sup> Kiguli, J 'Gender, "Ebyaffe" and power relations in the Buganda Kingdom: A study of cultural revivalism' (PHD thesis 2001 Universitat zu Koln, Deutschland) 196.

<sup>7</sup> As above 208. See also Oloka-Onyango (1997) 15 *Journal of contemporary African Studies* 173.

Cabinet.<sup>8</sup> In 1997 there were two women in the 65- member House of Assembly, five women in the 30- member Senate and one woman in the 16- member Cabinet.<sup>9</sup> However in 1999 the number of women increased to four in both the House of Assembly and the Senate and the number of women in the Cabinet increased from one to two.<sup>10</sup>

On the other hand, Kiguli argues that the Buganda *Lukiiko* (Parliament) still remains predominantly male even if it follows the affirmative action gender policy accorded to the Ugandan Cabinet.<sup>11</sup> For instance, in 1996, there were 16 women out of the House of 92 *Lukiiko* representatives.<sup>12</sup> It is against this background that there is a need to ensure that the full exercise of the right to participate in public affairs is extended to everyone, including women.

## 1.2 Statement of the problem

For a long time patriarchal African societies have denied women their rightful place in public life. There are certain cultural practices within these patriarchal societies, which impede the realisation of the human rights of women. Such cultural practices have impacted on the division of power and perpetuated the stereotypical roles of women within those societies. The diminished status of women in public life does not accord with universal human rights norms and standards. The fact that Swaziland has not ratified the International Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)<sup>13</sup> makes it difficult for women to vindicate their rights within the United Nations (UN) structures.

The right to participate in public affairs is recognised and enshrined as a fundamental human right in both universal and regional human rights instruments.<sup>14</sup> The exercise of

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<sup>8</sup> U.S Department of State, Bureau of Democracy, Human Rights and Labor, 30 January 1997. <<http://www.usis.usemb.se/human/1996/africa/swaziland.html>> (accessed on 27 February 2003).

<sup>9</sup> Same as above, Bureau of Democracy, Human Rights and Labor, 30 January 1998. <<http://www.usis.usemb.se/human/human97/swaziland.html>> (accessed on 27 February 2003).

<sup>10</sup> As n 8 above.

<sup>11</sup> As (n 6 above) 228.

<sup>12</sup> As (n 6 above) 280.

<sup>13</sup> CEDAW was adopted by the United Nations (UN) General Assembly on 18 December 1979 and entered into force on 3 September 1981.

<sup>14</sup> Art 21 of the Universal Declaration of Human Rights (UDHR), art 25 of the International Covenant on Civil and Political Rights (ICCPR), art 7 of the Convention on the Elimination of forms of Discrimination against Women (CEDAW), art I and III of the Convention on the Political

this right ensures that citizens both men and women have a say in the affairs of the governments of their respective countries. The scope of this right includes the right to vote and to be elected at genuine periodic elections, which shall be by universal and equal suffrage held by secret ballot, guaranteeing the free expression of the will of the electors.<sup>15</sup>

The deeply patriarchal nature of the two kingdoms presupposes that social, legal and political power is mainly vested in men. With the exception of royal women, “commoner” women are often given inferior roles or none at all in public life. The number of women holding positions in public life in both kingdoms suggests that there is an inherent anomaly in the division of power.

### **1.3 The objectives and significance of the study**

The overall objective of this study is to show that there are certain cultural practices, which infringe the human rights of women in patriarchal societies. Secondly, the study seeks to highlight that culture can be made responsive to the human rights of women. The specific objectives of this study include:

- a) To critically examine the legal and institutional framework within which the right to participate in public affairs is made accessible to women in Swaziland and Buganda;
- b) To identify cultural practices that impedes the right of women to participate in public affairs in Swaziland and Buganda;
- c) To identify ways in which the participation of women in public affairs in Swaziland and Buganda can be enhanced; and
- d) To make recommendations aimed at the legal reform of cultural structures in Swaziland and Buganda.

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<sup>15</sup> Rights of Women and art 13 of the African Charter on Human and Peoples’ Rights (ACHPR).  
Art 25 of the ICCPR.

## **1.4 Research questions**

This study sought to answer the following questions:

- a) What cultural justifications are used to limit women's participation in public affairs?
- b) Are such cultural justifications sustainable in contemporary societies?
- c) What role can the UN structures and the African Commission on Human and Peoples' Rights play to advance participation of women in public affairs in patriarchal societies?

## **1.5 Methodology**

The study relied mostly on available literature on traditional practices in both kingdoms and the way they impact on women's rights. Publications of prominent scholars were also analysed to conceptualise culture and explore the debate on cultural relativism and the universality of human rights. These included feminist scholars who have contributed to the debate on women's rights and culture.

Universal and African human rights instruments were relied on as primary sources. National constitutions were also perused to examine their conformity with universal human rights standards. In addition, articles from journals and websites were also consulted as secondary sources. Finally, only one interview with the Swaziland's High Commissioner to South Africa was possible.

## **1.6 Limitations of proposed study**

There was a general paucity of relevant materials on the subject especially on the kingdoms. As a result the study relied on a handful of available literature. Due to time constraints and unforeseen logistical problems, it was not possible to conduct enough interviews as it had been contemplated.

## 1.7 Literature review

Studies have been conducted on the human rights of women in Swaziland, but none has focused specifically on the rights of women in public life. For instance, Adinkrah<sup>16</sup> has previously published an article on the “non-rights of women in Swaziland”, but the study did not examine the specific traditional practices, which have impacted on the right of women to participate in public affairs. Baloro,<sup>17</sup> on the other hand, has written on the right to freedom of assembly and association and multi-party democracy in Swaziland in the absence of political parties. His focus was on highlighting the human rights violations inherent within that system of non-political party representation. Similarly Kuper<sup>18</sup> has written on the rank among the Swazi but that was confined to the royal family and did not highlight the cultural practices that impede women’s right to participate in public affairs. Marwick<sup>19</sup> has also written on the ethnographic account of the Swazis but his work is also similar to that of Kuper in that they focused on the same subject of status among the Swazi.

Similarly Kiguli<sup>20</sup> has written on the issue of gender and power relations in Buganda, but her focus was on the revival of the kingdom and its culture. Although Kiguli has extensively explored the role of women within the kingdom, her emphasis was on the royal women more than on commoner women in Buganda. On the other hand Tamale<sup>21</sup> has written on gender and Parliamentary politics, but her focus was not on the traditional and cultural aspect of Buganda as a kingdom. Rather her work focused on the position of women within the Ugandan national politics. In both cases the afore-mentioned scholars have found that there is an unequal division of power between men and women in Buganda and Uganda respectively.

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<sup>16</sup> Adinkrah (1990-1991) 30-31 *Journal of Legal Pluralism* 9.

<sup>17</sup> Baloro (1992) 22 *Africa Insight* 207-211.

<sup>18</sup> Kuper (1947).

<sup>19</sup> Marwick (1940).

<sup>20</sup> As n 6 above.

<sup>21</sup> Tamale (1999).

## **1.8 An overview of chapters**

Chapter two of this study examines the legal and institutional framework regulating the right to participate in public affairs at international and regional level. It does so by identifying the international and regional human rights instruments governing the exercise of this right. The chapter focuses on the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the African Charter on Human and Peoples' Rights (ACHPR) and the Protocol to the African Charter on the Rights of Women. It also discusses the role of the treaty bodies established under the ICCPR and CEDAW as well as the African Commission on Human and Peoples' Rights.

The third chapter examines the provisions of the national constitutions of Uganda and Swaziland, governing the right to participate in public affairs and the enforcement mechanisms created under those constitutions. It also analyses the political set-up in Buganda and Swazi kingdoms including the traditional set-up in Swaziland.

Chapter four starts by defining culture and then goes on to explore the debate over the universality of human rights and cultural relativism. Beyond this debate, the chapter proposes a way for finding a common ground between the two theories. It then turns on to focus on cultures and traditional practices impacting on the right of women to participate in public affairs in the two kingdoms.

Chapter five gives a brief exposition of the role of royal women in both kingdoms. Here, emphasis is on the roles of the queen mothers in both kingdoms, the role of the queen sister in Buganda and the princess of the country in Swaziland.

Finally, chapter six presents the conclusion of the study. This chapter also advances recommendations, which may be useful in assisting other traditional African societies in the full realisation of the right.

## CHAPTER 2

### 2.0 THE INTERNATIONAL AND REGIONAL LEGAL AND INSTITUTIONAL FRAMEWORK REGULATING THE RIGHT TO PARTICIPATE IN PUBLIC AFFAIRS

#### 2.1 Introduction

This chapter examines international and regional human rights instruments, their provisions as well as institutions created to monitor and enforce human rights under those instruments. Focus is on those instruments that provide for the right to participate in public affairs.

#### 2.2 International human rights law instruments

##### 2.2.1 Universal Declaration of Human Rights (UDHR): A common standard of achievement

The Universal Declaration of Human Rights is not binding on states, but creates a common standard of protection and promotion of human rights. However some scholars argue that the practice by states and international organisations has crystallised the UDHR into binding law as international custom in accordance with article 38 of the Statute of the International Court of Justice.<sup>22</sup>

The UDHR recognises that the inherent dignity and equality of all members of the human family is the foundation of freedom, justice and peace in the world.<sup>23</sup> Article 1 stresses that all human beings are born free and equal in dignity and rights. In amplification thereof, Article 2 provides for the enjoyment of the rights contained therein without distinction of any kind including sex or other status.

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<sup>22</sup> Szabo, I 'Historical Foundations of Human Rights and Subsequent Developments' in K Vasak (ed) *The International Dimensions of Human Rights* vol 1 at 24.

<sup>23</sup> Para 1 Preamble of UDHR.

The right to participate in public affairs is a fundamental right, which gives meaning to democracy and human rights. It pronounces the idea of the equal and inalienable rights of the individual in relation to his or her state and also sets minimum requirements for the democratic system of that state.<sup>24</sup> Article 21(1) provides, “Everyone has the right to take part in the government of his country directly or through freely chosen representatives.”

The masculine construction of this provision creates an impression that human rights were originally meant for men only. This masculine vocabulary of human rights law operates at both a direct and subtle manner to exclude women. Apparently all international human rights law rests on and reinforces a distinction between public and private spheres. This is a gendered distinction that operates to relegate women to the private sphere of home and family, whereas the public sphere of workplace, law, economics, politics, intellectual and cultural life is regarded as the province of men.<sup>25</sup> The gendered nature of the public and private dichotomy prejudices women, since both domestic and international legal systems are constructed to operate primarily in the public sphere.

With regard to culture, the UDHR only makes scant reference to the right to freely participate in the cultural life of one’s community.<sup>26</sup> It does not provide any guidance as to the status of men and women within that cultural community. The only logical conclusion to be drawn from that provision is that it does not imply subordination or discrimination of anyone on the basis of sex in pursuit of such cultural life. In any event article 29(2) provides that in the exercise of the rights and freedoms contained in the UDHR, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society. Article 30 also prohibits the destruction of rights contained in the UDHR by any state, group or person.

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<sup>24</sup> A Rosas ‘Article 21’ in G Alfredsson & A Eide (eds) (1999) *The Universal Declaration of Human Rights: A common standard of achievement* 431.

<sup>25</sup> See also Charlesworth, H ‘Are women’s rights human rights? International law of Human Rights’ 3<sup>rd</sup> Alicia Johnson Memorial Lecture 3/09/1993.  
<<http://www.int.gov.au/dem/wac/pdf/aj1993.pdf>> (accessed on 18 September 2003).

<sup>26</sup> See art 27.

### 2.1.3 The International Covenant on Civil and Political Rights (ICCPR)

The International Covenant on Civil and Political Rights was adopted on 16 December 1966 as part of the International Bill of Rights.<sup>27</sup> The most important feature of the ICCPR is that it is a universal instrument, which contains binding legal obligations for the States Parties to it.<sup>28</sup> Within the national framework Uganda is bound by this Covenant, having acceded to it on 21 September 1995.<sup>29</sup> Swaziland on the other hand, is not a State party to the Covenant and as such it is not bound by it.

The ICCPR has the fundamental principle of non-discrimination, which cuts across all the rights enshrined therein.<sup>30</sup> Article 2 imposes a duty on States Parties, to adopt legislative and other measures as may be necessary to give effect to the rights recognised in the Covenant. In addition it also imposes a duty on States parties to provide effective remedy for the violations of the rights enshrined in the Covenant and the enforcement of such remedies by competent authorities.<sup>31</sup>

The right to participate in public affairs is provided for in Article 25. This article creates mechanisms for political participation in the affairs of governments of States parties:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- b) To vote and to be elected at genuine periodic elections, which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the electors.

The conduct of public affairs in article 25 relates to the exercise of political power, in particular the exercise of legislative, executive and administrative powers.<sup>32</sup> This right

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<sup>27</sup> See U.N. GA Res. 2200(XXI) of 16 December 1966.

<sup>28</sup> Mcgoldrick (1994) 20.

<sup>29</sup> 'Status of ratifications of the principal international human rights treaties' <<http://www.unchrch/pdf/report.pdf>> (accessed on 6 September 2003).

<sup>30</sup> See art 2(1) and art 3.

<sup>31</sup> See art 2(3).

<sup>32</sup> ICCPR General Comment 25 par 5.

covers all aspects of public administration, the formulation and implementation of policy at international, national, regional and local levels.<sup>33</sup>

In practice citizens participate directly in the conduct of public affairs when they exercise power as members of legislative bodies or by holding executive office.<sup>34</sup> Citizens also participate directly in the conduct of public affairs when they choose or change their constitution or decide public issues through a referendum or other electoral process.<sup>35</sup>

It is important to note that General Comment 25 emphasise that where a mode of direct participation by citizens is established, no distinction should be made between citizens as regards their participation on the grounds mentioned in article 2(1) and that no unreasonable restrictions should be imposed.<sup>36</sup> Furthermore General Comment 25 stresses that any restrictions on the right to stand for election, must be justifiable on objective and reasonable criteria.

In as far as culture is concerned, the ICCPR provides for the right to cultural development within the framework of self-determination, but without derogating from the provisions of the covenant.<sup>37</sup> Accordingly there cannot be any justification for the violation of the rights contained in the covenant on the grounds of culture.

Another significant feature of the ICCPR is that it has created the Human Rights Committee for monitoring and enforcement of the rights it guarantees.<sup>38</sup> The Human Rights Committee enforcement mechanisms only apply to those States Parties who have ratified, succeeded or acceded to the Covenant and the Optional Protocol.<sup>39</sup>

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<sup>33</sup> As above.

<sup>34</sup> As (n 32 above) par 6.

<sup>35</sup> As above.

<sup>36</sup> As n 34 above.

<sup>37</sup> See art 1.

<sup>38</sup> Art 28.

<sup>39</sup> See also arts 1 & 2 of Optional Protocol to the ICCPR adopted by U.N. GA Res. 2200(XXI) of 16 December 1966.

#### **2.1.4 Convention on the Elimination of All forms of Discrimination Against Women (CEDAW): Redressing Gender Inequality**

The UN General Assembly adopted CEDAW on 18 December 1979. The Convention was the culmination of more than thirty years of work by the UN Commission on the Status of Women.<sup>40</sup> CEDAW is the central and most comprehensive document to come out of the efforts of the Commission, of bringing to light all the areas in which women were denied equality with men. The Convention not only establishes an international bill of rights for women, but also creates an agenda for action by States Parties to guarantee the enjoyment of those rights.<sup>41</sup> Article 17 of the Convention established the Committee on the Elimination of All forms of Discrimination Against Women, to monitor the implementation of its provisions by States Parties. It is worth noting that Uganda has ratified the Convention whereas Swaziland is not party to CEDAW.<sup>42</sup>

In accordance with the goals of the United Nations to “reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women”, the Convention acknowledges that extensive discrimination against women continue to exist. The Convention defines discrimination against women as:

Any distinction, exclusion or restriction made on the bases of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.<sup>43</sup>

The Convention further affirms the principle of equality by requiring States Parties to take “all appropriate measures, including legislation, to ensure the full development and advancement of women, for the purpose of guaranteeing them the exercise and enjoyment of human rights and fundamental freedoms on a basis of equality with

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<sup>40</sup> Feminist Majority Foundation ‘*Working for women’s equality*’  
<<http://www.feminist.org/research/cedaw.html>> (accessed on 15 September 2003).

<sup>41</sup> As above.

<sup>42</sup> As n 29 above.

<sup>43</sup> See art 1.

men”.<sup>44</sup> In addition, States Parties are implored to adopt affirmative action measures where necessary to redress the historical inequalities between men and women.<sup>45</sup>

Central to this discourse is article 7, which guarantees the right of women to participate in public affairs. Article 7 provides:

States Parties shall take all appropriate measures to eliminate discrimination against women in the political and public life of the country and, in particular, shall ensure to women, on equal terms with men, the right:

- a) To vote in all elections and public referenda and to be eligible for election to all publicly elected bodies;
- b) To participate in the formulation of government policy and the implementation thereof and to hold public office and perform all public functions at all levels of government.

The Convention while recognising that “a change in the traditional role of men as well as the role of women in society and in the family is needed to achieve full equality between men and women”, provides that States Parties shall take all appropriate measures to modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or superiority of either of the sexes or on stereotyped roles for men and women.<sup>46</sup>

Notwithstanding the positive aspects of the Convention, it had been criticised for its weak monitoring system.<sup>47</sup> The criticism was based on the premise that although Article 18 contained a stipulation on regular reporting by States Parties, the Convention did not provide for a possibility to submit individual or inter-state complaints to the Committee.<sup>48</sup> In response to this criticism the Optional Protocol to CEDAW was adopted by the UN

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<sup>44</sup> See art 3.

<sup>45</sup> See art 4.

<sup>46</sup> See art 5.

<sup>47</sup> Women’s Rights <<http://www.ykliitto.fi/ourcomhr/27women.html>> (accessed on 15September 2003)

<sup>48</sup> Stratton 77 *Minnesota law Review* 195 216.

General Assembly on 6 October 1999 and came into force on 22 December 2000.<sup>49</sup> This Protocol creates a mechanism for submission of individual or inter-state complaints to the Committee. Other criticisms that have been levelled against CEDAW include the fact that CEDAW Committee meets for shorter periods and has fewer enforcement mechanisms and fewer resources than other human rights treaty bodies.<sup>50</sup> In response, the CEDAW Committee recommended that Article 20 be amended to allow it to meet annually for such duration as is necessary for the effective performance of its functions. Subsequently the General Assembly adopted a resolution urging States parties to take appropriate measures as soon as possible to achieve the two-thirds majority required for the amendment to enter into force.<sup>51</sup> It is also contended that the number of reservations to its substantive provisions creates a barrier to its implementation.<sup>52</sup>

## **2.2 Regional Human Rights Instruments**

### **2.2.1 African Charter on Human and Peoples' Rights (ACHPR)**

The African Charter (ACHPR) does not comprehensively provide for the protection of women's rights. However, it imposes an obligation on States Parties to eliminate discrimination against women in Article 18(3):

The State shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the women and child as stipulated in international declarations and conventions.

The provisions of Article 18(3) are far reaching and ambiguous considering that usually declarations are not binding on States and that conventions are only binding on States Parties that have ratified or acceded to them. There is doubt as to whether conventions like CEDAW are applicable to States Parties to the African Charter, without express

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<sup>49</sup> The Optional Protocol to CEDAW  
<[http://www.hreoc.gov.au/sex\\_discrimination/cedaw/the\\_optional\\_protocol.html](http://www.hreoc.gov.au/sex_discrimination/cedaw/the_optional_protocol.html)> (accessed on 20 September 2003).

<sup>50</sup> As (n 48 above) 217.

<sup>51</sup> See U.N. GA Res A/50/202 of 22 December 1996.

<sup>52</sup> As n 50 above.

ratification or accession to such.<sup>53</sup> Notably both Uganda and Swaziland have ratified the African Charter and are bound by its provisions.<sup>54</sup>

The right to participate in public affairs is the cornerstone of any democracy and is provided for in article 13(1). Article 13(1) provides:

Every citizen shall have the right to participate freely in the government of his country, either directly or through freely chosen representatives in accordance with the provisions of the law.

This provision is similar to its equivalent in the Universal Declaration of Human Rights, except that it has a “claw-back” clause.<sup>55</sup> Some scholars like Heyns<sup>56</sup> argue that this provision is limited in scope when compared with Article 25 of the ICCPR. On the other hand, Mutua<sup>57</sup> regards the use of “claw-back” clauses as the most serious flaw in the Africa Charter. According to him the “claw-back” clauses weaken the African Charter and permit African States to restrict basic human rights to what he calls the maximum extent allowed by domestic law.<sup>58</sup> He also alludes to the fact that the African Charter does not have a general derogation clause, a factor that he attributes to the “claw-back” clauses, which according to him permits States to suspend, *de facto* many fundamental rights in their municipal laws.

Assuming that Article 13(1) is non-derogable and does not discriminate against women, it can always be interpreted in accordance with article 2, which states:

Every individual shall be entitled to the enjoyment of the rights and freedoms recognized in the present Charter without distinction of any kind such as race, ethnic group, color, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

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<sup>53</sup> Umozurike (1997) 57.

<sup>54</sup> As n 29 above.

<sup>55</sup> “Claw-back” clause implies that the Charter is providing the right with the one hand and at the same time takes it away with the other hand.

<sup>56</sup> Heyns, C ‘Civil and Political Rights in the African Charter’ in Evans, M & Murray, R (eds) (2002) *The African Charter on Human and Peoples’ Rights: The System in Practice, (1986-2000)* 172.

<sup>57</sup> Mutua, M ‘The African Human Rights System: A Critical Evaluation’ <[http://hdr.undp.org/docs/publications/background\\_papers/MUTUA.PDF](http://hdr.undp.org/docs/publications/background_papers/MUTUA.PDF)> (accessed on 18 September 2003).

<sup>58</sup> As above.

Apart from this article, Article 1 imposes an obligation on States Parties to recognise the rights, duties and freedoms enshrined in the Charter and to adopt legislative or other measures to give effect to them.

The African Charter established the African Commission on Human and Peoples' Rights under Article 30, to protect and promote human and peoples' rights.<sup>59</sup> In an effort to further strengthen the protection of women's rights, commissioner Ondziel-Gnelenga was appointed Special Rapporteur on the Rights of Women with effect from 31 October 1998.<sup>60</sup> Dr. Angela Melo took over from her in October 2001 for a period of two years.<sup>61</sup>

Recently there have been positive moves to establish the African Court on Human and Peoples' Rights. The envisaged African Court is intended to complement the promotional and protective mandate of the African Commission. The OAU Council of Ministers adopted the Draft Protocol Establishing the African Court on Human and Peoples' Rights in February 1998. In June 1998, the OAU Assembly formally adopted the Draft Protocol and opened it for signature by OAU Member States. In terms of Article 34 of the Protocol to the African Charter on the Establishment of the African Court on Human and Peoples' Rights, the protocol shall come into force 30 days after 15 instruments of ratification or accession have been deposited. Notably Uganda has ratified the Protocol and Swaziland has not.

There is uncertainty as to the clear delimitation of the mandate of the African Court and the African Commission. Article 2 of the Protocol provides that the Court will complement the protective mandate of the African Commission, but does not elaborate as to how the Court will achieve that. The African Charter should rather be revised to remove protective functions from the African Commission and to vest them exclusively with the African Human Rights Court.<sup>62</sup>

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<sup>59</sup> See art 45

<sup>60</sup> Evans, M & Murray, R 'The Special Rapporteurs in the African System' in Evans, M & Murray, R (eds) (2002) *The African Charter on Human and Peoples' rights: The System in Practice (1986-2000)* 297.

<sup>61</sup> See Final Communiqué of the 30<sup>th</sup> Ordinary Session of the African Commission on Human and Peoples' Rights; 13<sup>th</sup>-27<sup>th</sup> October 2001, Banjul, The Gambia, par 7.

<sup>62</sup> See Mutua (n 55 above) 31.

In recognition of the shortcomings of the African Charter to protect human rights adequately, the First OAU Ministerial Conference on Human Rights held in 1999, adopted a Declaration and Plan of Action.<sup>63</sup> The Declaration affirmed that human rights are universal, indivisible, interdependent and inter-related and urged governments to give parity to economic, social and cultural rights as well as civil and political rights in their policies.<sup>64</sup> The Conference welcomed the decision to elaborate a protocol to the African Charter for the effective protection of women's rights, and called on the OAU to convene a meeting of government experts to examine the instrument. It also urged all African States to work assiduously towards the elimination of discrimination against women and the abolition of cultural practices that dehumanise or demean women and children.<sup>65</sup> Quite correctly the Conference acknowledged that violations of human rights are caused among others by monopoly in the exercise of power.<sup>66</sup>

### **2.2.2 Additional Protocol on the Rights of Women in Africa**

The Protocol on Women's rights was adopted by the 2<sup>nd</sup> Ordinary Session of the Assembly of the African Union (formerly OAU) on 11 July 2003, in Maputo, Mozambique. However, the Protocol will come into force after 15 States have signed and ratified it. Neither Uganda nor Swaziland has ratified the protocol yet. The Protocol is indeed a landmark achievement for the protection of women's rights in Africa. In essence it compares fairly with CEDAW in that it is gender specific and acknowledges the peculiar situation of women.

Article 2 of the Protocol emphasises the elimination of discrimination against women by States Parties through appropriate legislative, institutional and other measures. Article 2 further imposes an obligation on States Parties to include the principle of equality between women and men and ensure their effective application in their national constitutions and other legislative instruments.<sup>67</sup> In addition, it obliges States Parties to integrate a gender perspective in their policy decisions, legislation, development plans, programmes and activities and in all other spheres of life.<sup>68</sup> Article 9 guarantees the right of women to participate in the political and decision-making process of their countries.

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<sup>63</sup> 1<sup>st</sup> OAU Ministerial Conference on Human Rights held from 12-16 April 1999 in Grand Bay, Mauritius (hereinafter Grand Bay Declaration).

<sup>64</sup> See Grand Bay Declaration par 1.

<sup>65</sup> As above par 6.

<sup>66</sup> As above par 8(i)

<sup>67</sup> Art 2(1) (a).

<sup>68</sup> Art 2(1) (a).

This chapter has illustrated that the right to participate in public affairs is guaranteed at international and regional level. It has also demonstrated that Uganda is State Party to the ICCPR, CEDAW and the African Charter and therefore bound by their provisions, whereas Swaziland is State Party only to the African Charter and also bound by its provisions. The following chapter will examine whether the constitutions of Swaziland and Uganda conform to the norms and standards of the aforesaid human rights instruments.

## CHAPTER 3

### 3.0 THE DOMESTIC PROTECTION OF THE RIGHT TO PARTICIPATE IN PUBLIC AFFAIRS AND THE POLITICAL SET- UP IN BUGANDA AND SWAZILAND

#### 3.1 The Constitution of the Republic of Uganda

The Constitution of Uganda was adopted on 22 September 1995 by the Uganda Constituent Assembly.<sup>69</sup> The Constitution is the supreme law of Uganda and is binding on all authorities and persons throughout Uganda.<sup>70</sup> Any law or custom inconsistent with the Constitution is void to the extent of that inconsistency.<sup>71</sup> The Constitution makes provision for fundamental rights and freedoms under chapter four.

Article 21(1) provides that all persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy equal protection of the law. No person shall be discriminated against on the ground of sex, race, colour, ethnic origin, tribe, birth, creed or religion, or social or economic standing, political opinion or disability.<sup>72</sup> The Constitution empowers the Parliament to enact laws that are necessary for implementing policies and programmes aimed at redressing social, economic or educational or other imbalance in society.<sup>73</sup>

Article 59(1) guarantees the right of every citizen of 18 years of age or above to vote. The State has a duty to take all necessary steps to ensure that all citizens qualified to vote, register and exercise their right to vote.<sup>74</sup> In addition article 38(1) guarantees the right of every Uganda citizen to participate in the affairs of government, individually or through his or her representatives in accordance with law.<sup>75</sup>

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<sup>69</sup> See Preamble to the Constitution of the Republic of Uganda.

<sup>70</sup> Art 2(1).

<sup>71</sup> Art 2(2).

<sup>72</sup> Art 21(2).

<sup>73</sup> Art 21(4).

<sup>74</sup> Art 59(2).

<sup>75</sup> Principle II of the National Objectives and Directive Principles of State Policy also affirms that all the people of Uganda shall have access to leadership positions at all levels, subject to the

Women are guaranteed the right to equal treatment with men and that right includes equal opportunities in political, economic and social activities.<sup>76</sup> In addition women have the right to affirmative action for the purpose of redressing the imbalances created by history, tradition or custom.<sup>77</sup> The State is obliged to provide facilities and opportunities necessary to enhance the welfare of women to enable them to realise their full potential and advancement and shall also protect them and their rights, taking into account their unique status and natural maternal functions in society.<sup>78</sup>

In Uganda every person has a right to belong to, enjoy, practise, profess, maintain and promote any culture, cultural institution, language, tradition, creed or religion in community with others.<sup>79</sup> However, laws, cultures, customs or traditions which are against the dignity, welfare or interest of women or which undermine their status are prohibited under the Uganda Constitution.<sup>80</sup> In an effort to concretise the promotion and protection of human rights, the Uganda Constitution makes provision for the establishment of the Uganda Human Rights Commission in article 51(1).

In terms of article 123(a) the Parliament of Uganda shall make laws to govern ratification of treaties, conventions and international agreements. The Constitution does not expressly provide whether treaties, conventions or international agreements entered into or ratified by Uganda form part of the law of Uganda or whether such treaties, conventions or international agreements should be incorporated in the domestic law of Uganda.

### **3.2 The Constitution of the Kingdom of Swaziland**

The 1968 repealed Constitution of Swaziland did not provide for fundamental rights and freedoms.<sup>81</sup> This is the Constitution that is in operation pending the adoption of the new constitution. Hence this study proceeds upon the assumption that the 2003 Draft Constitution will ultimately be adopted in October 2003, as hinted by the Swazi

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Constitution and that the composition of government shall be broadly representative of the national character and social diversity of the country.

<sup>76</sup> Art 33(4).

<sup>77</sup> Art 33(5).

<sup>78</sup> Art 33(2) & (3).

<sup>79</sup> Art 37.

<sup>80</sup> Art 33(6).

<sup>81</sup> See par 1.1.1 above.

authorities.<sup>82</sup> This assumption is reinforced by the positive response that has been shown towards the Draft Constitution. For instance, Dr. Joshua Mzizi, who heads the Human Rights Association of Swaziland (HUMARAS), had this to say about the Draft Constitution:

We are happy that the Constitution contains a Bill of Rights. This is the cornerstone of all modern constitutions, and it conforms to the UN Declaration on Human Rights, to which Swaziland subscribes.<sup>83</sup>

In the same vein women's organisations have welcomed the advent of a new constitutional order, which will see cultural practices that degrade women being done away with.<sup>84</sup> A discussion of those cultural practices will be pursued in the following chapter.

Although there has been a strong objection to the way in which the Draft Constitution was created from some quarters, it seems very likely that it will be adopted.<sup>85</sup> For instance Mr. Jan Sithole, the Executive Director of Swaziland Coalition of Concerned Civil Organisations, commented 'that future looks a lot like the past', but indicated that they would not derail the constitutional process.

Assuming that the Draft Constitution does come into effect, it will be the supreme law of Swaziland and any other law inconsistent with it will be void to the extent of that inconsistency.<sup>86</sup> Surprisingly Section 2(1) does not say anything about customs or traditional practices that are inconsistent with human rights and which may be inconsistent with the constitution. This means that the Draft Constitution implicitly condones cultural practices that infringe women's rights.

Section 21(1) provides that all persons are equal before and under the law in all spheres of political, economic, social and cultural life and in every other respect and shall enjoy

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<sup>82</sup> Swaziland: Special report on the Draft Constitution <[http://www.irinnews.org/s\\_report.asp?ReportID=34583](http://www.irinnews.org/s_report.asp?ReportID=34583)> (accessed on 21 August 2003).

<sup>83</sup> Quoted in Swaziland: Human rights and the Draft Constitution <[http://www.irinnews.org/s\\_report.asp?ReportID=34590](http://www.irinnews.org/s_report.asp?ReportID=34590)> (accessed on 21 August 2003).

<sup>84</sup> Swaziland: Good news for women <[http://www.irinnews.org/s\\_report.asp?ReportID=34586](http://www.irinnews.org/s_report.asp?ReportID=34586)> (accessed on 21 August 2003).

<sup>85</sup> See Swaziland: Royal rule questioned as Draft Constitution discussed <<http://www.irinnews.org/report.asp?ReportID=35917>> (accessed on 21 August 2003).

<sup>86</sup> Sec 2(1).

equal protection of the law. Accordingly, a person shall not be discriminated against on the grounds of gender, race, colour, ethnic origin, tribe, birth, creed or religion, social or economic standing, political opinion, age or disability.<sup>87</sup> Section 21(3) defines 'discrimination' as giving different treatment to different persons attributable only or mainly to their respective descriptions by gender, race, colour, ethnic origin, birth, tribe, creed or religion, social or economic standing, political opinion, age or disability. Parliament is also forbidden from enacting laws that are discriminatory either of themselves or in their effect.<sup>88</sup>

Clearly the emphasis is not only on the prohibition of formal discrimination but also of substantive discrimination. On the other hand Parliament may pursue affirmative action by enacting laws that are necessary for implementing policies and programmes aimed at redressing social, economic or educational or other imbalances in society.<sup>89</sup>

Section 85(1) provides that the people of Swaziland have a right to be heard through and represented by their own freely chosen representatives in the government of the country. Subsection (2) thereof guarantees the right of women and other marginalized groups, to equitable representation in Parliament and other elective public structures. Where at the first meeting of Parliament after any general election it appears that female members of Parliament do not constitute at least 30 percent of the total membership of Parliament, the two Chambers of Parliament shall form an electoral college and elect four women on a regional basis to Parliament.<sup>90</sup>

Section 95(2) further provides that out of ten (10) Senators elected by the Members of Parliament, at least half of them shall be women. Out of 20 Senators, who shall be appointed by the king, eight of them shall be women.<sup>91</sup>

In terms of Section 86(1) every Swazi, or person ordinarily resident in Swaziland has a right to vote at any election of Members of Parliament or *Bucophho*.<sup>92</sup> It is noteworthy that

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<sup>87</sup> Sec 21(2)

<sup>88</sup> Sec 21(4).

<sup>89</sup> Sec 21(5).

<sup>90</sup> Sec 87(1) & (2).

<sup>91</sup> Sec 95(3).

<sup>92</sup> *Bucophho* is an executive committee of an *Inkhundla*, whereas an *Inkhundla* is a delineated electoral area or constituency.

Sections 85(1) and 86(1) make no mention of the right to be elected, except for the right to be represented and the right to vote respectively.

Women shall have the right to equal treatment with men, which shall include equal opportunities in political, economic and social activities.<sup>93</sup> In contrast, subsection (2) thereof provides that subject to the availability of resources, the Government shall provide facilities and opportunities necessary to enhance the welfare of women to enable them to realise their full potential and advancement. This provision seems to create a margin of appreciation in favour of Government in relation to the rights and advancement of women. This approach cannot be justified since government may plead lack of resources as its failure to enhance the welfare of women.

Paramount to this study is Section 29(3), which provides that a woman shall not be compelled to undergo or uphold any custom to which she is in conscience opposed. Again the wording of this section is problematic in that there seems to have been reluctance on the part of the drafters to unequivocally out law customs that violates women's human rights. Women who are not aware of this provision and who are not assertive of their rights will be deemed to have waved their rights not to subject to customs that violate their rights.

There shall be established the Commission on Human Rights and Public Administration within a year of the first meeting of Parliament after the commencement of the Draft Constitution.<sup>94</sup> It will monitor the protection and enforcement of human rights in Swaziland.<sup>95</sup>

The Draft Constitution of Swaziland does not provide for the application of international treaties domestically and does not explain as to whether treaties form part of the law of Swaziland or whether they have to be incorporated upon ratification.

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<sup>93</sup> Sec 29(1).

<sup>94</sup> Sec 164(1).

<sup>95</sup> Sec 165(1)(a).

### 3.3 The Political Set-Up in Buganda

#### 3.3.1 The Composition of the Buganda Parliament (*Lukiiko*)

In terms of Article 20 of the Buganda Constitution of 1962, the Parliament (*Lukiiko*) shall be composed of 68 elected members, chiefs of the counties (*Ssazas*) not exceeding 20 in number, six members appointed by the King and those members of the King's Council of Ministers who are not members of the Parliament by virtue of being part of the 68 or 20 previously mentioned people.

In the execution of its duties, the *Lukiiko* may establish standing and adhoc committees consisting of its members for any purpose.<sup>96</sup> The *Lukiiko* may also establish standing committees to advise the Ministers responsible for finance, public works, education, health, natural resources and local government and community development. The *Lukiiko* shall elect its Speaker and Deputy Speaker at its first sitting.<sup>97</sup> The Speaker shall preside at meetings of the *Lukiiko*, in the absence of the Speaker the Deputy Speaker shall preside.<sup>98</sup> In the absence of both the Speaker and the Deputy Speaker, the *Lukiiko* may elect any person among its members to preside over its meetings.<sup>99</sup>

The aforesaid situation is likely to change in the event the new constitution titled "The Constitution of Buganda Under a Federal Arrangement" is adopted. This document forms the basis of the Buganda kingdom submissions to the present Ugandan Constitutional Review Commission (UCRC). In terms of the latter constitution, the Buganda *Lukiiko* shall be composed of the Upper House and the Lower House. The Upper House shall be composed of the clan heads (*Bataka*) of Buganda's 52 clans, the Buganda chieftainships, the 20 *Ssaza* (counties) chiefs, 10 *Kabaka's* appointees and the *Ssabalamuzi*<sup>100</sup> of Buganda.<sup>101</sup> The Upper House shall act as a revision Chamber, reviewing and amending all legislation and recommending changes to the Lower House, which shall be obliged to consider the recommendations.<sup>102</sup> The Upper House shall also have exclusive power to initiate the making of laws on Kiganda culture, traditions and

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<sup>96</sup> Art 35(1).

<sup>97</sup> Art 27(1).

<sup>98</sup> Art 28(a) & (b).

<sup>99</sup> Art 28(c).

<sup>100</sup> *Ssabalamuzi* is the Chief Judge of Buganda and chief Legal Adviser to the Upper House.

<sup>101</sup> Art 5(1).

<sup>102</sup> Art 5(5).

norms. It is worth noting that the envisaged Upper House will be predominantly male given that all clan heads and chiefs are male, and as such it may further consolidate patriarchy in Buganda through its exclusive powers of making laws on culture, traditions and norms.

The Lower House shall consist of directly elected members representing each of the *Gombololas* (sub-counties) in Buganda, 20 directly elected women representatives from each of the 20 counties, a specially elected member, appointed by the King, who will also be Cabinet Minister without portfolio and who shall also be an ex-official of the Lower House, and an Attorney General appointed by the King, who shall also be an ex-official of the Lower House.<sup>103</sup> The Lower House shall elect its own Speaker and Deputy Speaker by a simple majority through a secret ballot.<sup>104</sup> The Lower House shall have power to initiate the making of laws compatible with the Constitution of Uganda. This is a positive aspect assuming that the Lower House shall observe human rights particularly women's rights as guaranteed in the Ugandan Constitution.

### **3.3.2 The Conduct of Elections in Buganda**

In terms of Article 24 of the Buganda Constitution of 1962, each constituency shall be represented by one elected member and every person whose name appears in the register of electors prepared for the election of elected members of the national Assembly, which relate to the area included in a constituency shall be entitled to vote at elections of an elected member of the *Lukiiko*, to represent that constituency. Furthermore the elections shall be conducted in accordance with the general law of Uganda, relating to the election of elected members of the National Assembly.

Article 36(1)(a) of the envisaged "Federal Constitution" of Buganda provides that the *Ssaza* (county) Council shall have a maximum of 35 councillors but not less than 25. In addition each *Gombolola* (sub-county) Council through college elections shall elect not more than 5 councillors depending on the number of *Gombololas* (sub-counties) in a *Ssaza* (county), to represent the Council at the *Ssaza* Council.<sup>105</sup> The *Muluka* Council shall have a maximum of 24 councillors but not less than 15, elected through Village

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<sup>103</sup> Art 6(1).

<sup>104</sup> Art 6(4).

<sup>105</sup> Art 36(1)(b).

college elections, where each Village Council is represented at the *Muluka* Council by not more than three councillors depending on the number of villages in a *Muluka*.<sup>106</sup> The Village Council shall have a maximum of 15 councillors but not less than nine of whom two are women and one is a youth.<sup>107</sup>

It should be noted that neither the 1962 Buganda Constitution nor the “Federal Constitution” provide for an elaborate electoral procedure, neither is there an elaborate electoral law in Buganda. These constitutions also do not provide for affirmative action for the benefit of marginalized groups such as women.

### **3.4 The Political Set-Up in Swaziland**

#### **3.4.1 The Composition of the Swazi Parliament**

Section 94 of the Draft Constitution of Swaziland provides that the Parliament shall consist of the Senate and the House of Assembly. The Senate shall consist of not more than 31 members.<sup>108</sup> Members of Parliament shall elect 10 Senators at its first sitting, to represent a cross-section of the Swazi society.<sup>109</sup> Out of the 10 Senators so elected, half of them shall be women.<sup>110</sup> The king in his discretion shall appoint 20 other Senators after consulting with such bodies, as he may deem necessary.<sup>111</sup> At least eight of the appointed Senators shall be women.<sup>112</sup> The Senate shall elect its President and Deputy President at its first sitting after any general election.<sup>113</sup>

The proposed composition of the Senate reflects a manifestation of inequality between the sexes in the appointment of Senators. There is no justification for the appointment of only eight women as opposed to 12 men. This constitutes a violation of the right of women to equality, which is guaranteed under Section 21 of the Draft Constitution of Swaziland. Secondly the appointment system is an affront to democracy and ignores the fact that Section 85(1) of the Draft Constitution lies at the core of a democratic

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<sup>106</sup> Art 36(1)(e).

<sup>107</sup> Art 36(1)(f).

<sup>108</sup> Sec 95(1).

<sup>109</sup> Sec 95(2).

<sup>110</sup> As above.

<sup>111</sup> Sec 95(3).

<sup>112</sup> As above.

<sup>113</sup> Sec(s) 101 & 102.

government based on the consent of the people. The appointment system dilutes the power and influence of the elected members in the deliberation and voting of such a body, since appointed members will often pay their allegiance to the appointing authority rather than the electorate. The system constitutes a direct attack on the rights of elected representatives to participate in public affairs and undermines their ability to influence policy decisions as representatives of the voters. It also distorts the will of the voters expressed in the election.

Such a distortion of the will of the voters and the dilution of their representation violate their right to participate in public affairs through elected representatives. Instead the electorate should have a greater freedom to decide on who is going to represent them by casting their votes in an election rather than leaving this to the king, the appointments of whom they have no right to participate in. Given the patriarchal nature of the Swazi society, such appointments might also be detrimental to the rights of women in general.

Section 96(1) provides that the House of Assembly shall consist of not more than 76 members. A maximum of 60 members shall be elected from *Tinkhundla* areas serving as constituencies.<sup>114</sup> The King acting in his discretion after consulting with such bodies, as he may deem necessary, shall nominate a maximum of 10 members.<sup>115</sup> It should also be noted that the Swazi Parliament essentially plays an advisory role to the king as he has the power to decree laws rejected by Parliament. In addition, four female members may be elected from four regions provided that at the first sitting of Parliament after any general election, it appears that female Members of Parliament do not constitute at least 30 percent of the total membership of Parliament.<sup>116</sup> The House of Assembly shall elect its Speaker and Deputy Speaker at its first sitting.<sup>117</sup>

### **3.4.2 Traditional Structures in Swaziland**

Previously the 1968 repealed Constitution of Swaziland provided for the Swazi National Council (SNC).<sup>118</sup> The SNC consisted of the King (*Ngwenyama*), Queen Mother

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<sup>114</sup> Sec 96(1)(a).

<sup>115</sup> Sec 96(1)(b).

<sup>116</sup> Sec 96(1)(c) read with Sec 87(1).

<sup>117</sup> Sec(s) 103 & 104.

<sup>118</sup> Sec 135.

(*Ndlovukazi*), *Bantfwabenkhosi*, chiefs and all adult citizens.<sup>119</sup> The primary function of the SNC was to advise the king on all matters regulated by Swazi law and custom. The SNC exercised such functions either in *Libandla* or in *Liqoqo*.<sup>120</sup>

In terms of Section 233 of the Draft Constitution, the Swazi National Council (SNC) or *Sibaya* constitutes the highest Policy and Advisory Council (*Libandla*) of the nation. The SNC shall be constituted by *Bantfwabenkhosi*, the chiefs of the realm and all adult citizens. It shall gather at the official residence of the Queen Mother under the Chairmanship of the Senior Prince (*Umtfwanenkhusi Lomkhulu*). The SNC functions as the annual general meeting of the nation, but may be convened at any time to present the views of the nation on pressing and controversial national issues. A positive feature of the SNC is that it is inclusive of women without any limitations. However, the Draft Constitution does not elucidate whether the deliberations of this council have any binding effect in law. The assumption is that they might be binding where Swazi law and custom is concerned, since Swazi law takes precedence over common law. It is this duality of the Swazi legal system, which creates problems for women's rights because Swazi laws and customs do not accord women equal status with men, as does the common law.

### 3.4.3 The Conduct of Elections in Swaziland

The government of Swaziland is based on the *Tinkhundla* system, "which emphasises the devolution of state power from central government to *Tinkhundla* areas and individual merit as a basis for election or appointment to public office."<sup>121</sup> However, if this was meant to be a devolution of power in a true sense of federalism, then the system is a distortion of federalism, since the power still remain with central government because people elected through this system go to the central government but not to local structures. *Tinkhundla* is a number of delineated areas or constituencies, presently numbered at 55 that put forth candidates standing for election to a bicameral Parliament.<sup>122</sup> Although Section 26 of the Draft Constitution guarantees the right to

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<sup>119</sup> *Bantfwabenkhosi* are the senior princes, important paternal uncles and half-brothers of the King, whose membership is determined in accordance with Swazi law and custom; see also Sec 231(1) of the Draft Constitution of Swaziland.

<sup>120</sup> *Libandla* means Advisory Council of the nation and *Liqoqo* means King's Advisory Council.

<sup>121</sup> Sec 80 Swazi Draft Constitution (2003).

<sup>122</sup> ICJ (2003), Report of the Centre of the Independence of Judges and Lawyers 11.

freedom of association and assembly, the *Tinkhundla* system is based on parliamentary representation without political parties.<sup>123</sup>

The present *Tinkhundla* system came into being with the King's Order in Council no 1 of 1992.<sup>124</sup> The system provides for a three-stage election process, which is nominations within an *Inkhundla* (singular for *Tinkhundla*), primary elections and secondary elections by secret ballot. Nominations are done by the show of hands in each of the 55 constituencies.<sup>125</sup> Each nominee has to be supported by at least 15 people, who should give reasons why they nominate the candidate.<sup>126</sup> The Election Order of 1992 provides that not less than four or more than 10 people should be nominated in a constituency. Candidates who have criminal convictions are disqualified from being nominated, nevertheless any citizen who has attained the age of 18 is qualified to vote or stand for election. Independent campaigning is prohibited for both primary and secondary elections, instead the Returning Officer for the constituency takes the candidates around together to the various chiefdoms to meet the community and discuss issues of local concern with them, at state expense.<sup>127</sup>

During the primary elections at constituency level, people nominated compete against each other through a secret ballot and only five candidates must win.<sup>128</sup> In the secondary elections, out of the five candidates elected during primary elections, only one candidate must win to go to Parliament.<sup>129</sup> The High Commissioner also pointed that constituencies have the right to recall the elected candidates if they do not deliver on their mandate, contrary to Baloro's assertion that members elected to Parliament do not represent any particular constituency or electoral district as they are expected to represent the interests of the nation as a whole.<sup>130</sup> Out of the 55 elected to go to Parliament, 10 are elected to go to the Senate by the House of Assembly sitting as an electoral college. The King appoints the rest of the parliamentarians.

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<sup>123</sup> Baloro (1992) 22 *Africa Insight* 209.

<sup>124</sup> See Swaziland Elections Order of 1992.

<sup>125</sup> Sec 7 as above.

<sup>126</sup> An interview with Mr J Hlophe, Swaziland's High Commissioner to South Africa, held on 28 July 2003 in Pretoria.

<sup>127</sup> Commonwealth Expert Team Report on Voter Registration in Swaziland (2003) <<http://www.thecommonwealth.org/docs.html>> (accessed on 14 October 2003).

<sup>128</sup> As above.

<sup>129</sup> As above.

<sup>130</sup> As n 123 above.

After examining the Constitution of Uganda and the Draft Constitution of Swaziland, it became clear that the right to participate in public affairs is also guaranteed at national level. An analysis of the composition of parliaments and electoral provisions in both kingdoms, revealed that in Buganda women do not stand any chance of being equally represented in the *Lukiiko* given that the majority of its composition are clan heads and chiefs, whom in terms of kiganda culture are men. The appointment system prevalent in both kingdoms also proved to be an impediment to the full realisation of women's rights to participate in public affairs.

## CHAPTER 4

### 4.0 CULTURE AND TRADITIONAL PRACTICES IMPACTING ON THE RIGHT IN BUGANDA AND SWAZILAND

#### 4.1 Defining culture

Culture is that complex whole which includes knowledge, belief, art, morals, law, custom and any other capabilities and habits acquired by a human being as a member of society. Culture provides the source of an individual's identity within a given society. In the past, anthropologists have tried to define culture but none has come up with a conclusive definition. For example Otterbein defines culture as the way of life of a particular group of people.<sup>131</sup> According to him culture is everything that a group of people thinks, says, does, makes and it is learned and transmitted from generation to generation. On the other hand, Talcott Parsons defines culture as consisting:

In those patterns of behaviour and the product of human action, which may be inherited, that is, passed from generation to generation independently of the biological genes.<sup>132</sup>

Consequently if one follows Parsons' definition of culture, it becomes clear that whatever culture is prevalent in a particular society, such cannot be said to be static or unchanging. The mere fact that it exists independently of biological genes means that it can be adapted with changing times. Hence the practice of ascribing women subordinate positions in society cannot be justified on the basis of predated cultures.

#### 4.2 The Universality of Human Rights and Cultural Relativism Dichotomy

##### 4.2.1 The case for Universality of Human Rights

The universality of human rights owes its validity to the United Nations Charter. The United Nations Charter states in its preamble that human rights are for all without

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<sup>131</sup> Otterbein (1972) 1.

<sup>132</sup> Quoted in, Pi-Sunyer & Salzmann (1978) 10.

distinction. The Charter further commits the United Nations and all Member States to take action to promote universal respect for and observance of human rights and fundamental freedoms. In addition, the Universal Declaration of Human Rights proclaims the universality of human rights as a “common standard of achievement for all peoples and all nations”. It further imposes an obligation on every individual and every organ of society, to strive by teaching and education to promote respect for human rights and fundamental freedoms, and to secure their universal and effective recognition and observance.

In June 1993, the United Nations World Conference on Human Rights, held in Austria, reaffirmed the universality of human rights by stating “all human rights are universal, indivisible and interdependent and interrelated”.<sup>133</sup> The Conference also emphasised that while bearing in mind the significance of national and regional particularities and various historical, cultural and religious backgrounds, it is the duty of states, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.

Concretely, universal human rights do not impose one cultural standard, but one legal standard of minimum protection essential for human dignity. They represent the hard-won consensus of the international community, not the cultural imperialism of any particular region or set of traditions, as perceived by cultural relativists.<sup>134</sup> The universality of human rights is founded on the premise that there are certain standards below which no state or society can go regardless of its own cultural values, in ensuring the promotion and protection of human rights.<sup>135</sup>

#### **4.2.2 The case for Cultural Relativism**

F Teson defines cultural relativism as the position according to which local cultural traditions including religious, political and legal practices, properly determine the existence and scope of civil and political rights enjoyed by individuals in a given

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<sup>133</sup> Vienna Declaration and Program of Action 1993 Part II para 3.

<sup>134</sup> Ayton-Shenker, D ‘The Challenge of Human Rights and Cultural Diversity’ *United Nations Department of Public Information DPPI/1627/HR*—March 1995.

<sup>135</sup> Silk, J ‘Traditional Culture and the Prospect of Human Rights in Africa’ in An-Na’im, A & Deng, F (eds) (1990) *Human Rights in Africa: Cross-Cultural Perspectives* 316.

society.<sup>136</sup> This definition however, reflects ethnocentric tendencies and is over simplified in that it does not take into account that socio-economic rights are emphasised in traditional African societies, as opposed to civil and political rights.

Cultural relativism is premised on the notion that no transboundary legal or moral standards exist against which human rights practices may be judged acceptable or unacceptable. In essence relativists assert that human rights vary among different cultures and necessarily reflect national particularities. Accordingly, that which may be regarded as human rights violations in one society may be considered lawful in another.

According to relativists, universal human rights norms reflect western values, which emphasise the primacy of civil and political rights, and that such should not be imposed upon Third World societies.<sup>137</sup> Efforts to enforce these “western values” are denounced as cultural imperialism. The relativists argue that fundamental values are culturally specific and that the communal group is the basic social unit.<sup>138</sup> Consequently the communal group subsumes the individual, and the person’s identity is ascribed by his or her status and role in that group. They point to the African societies, which are based on communalism rather than individualism, which postulates that socio-economic rights are obligations of the community toward all its members.

In Africa, political relations have been constructed with emphasis on communal group as opposed to the individual. This is reflected on political power, which devolves on the patriarchal clan as opposed to the individual. Relativists perceive women as supportive, nurturing, acquiescent, subordinate, and familial, not as political persons and authority figures, hence their exclusion from the political conundrum and the public sphere.<sup>139</sup>

African relativists tend to reify traditional cultures and view them as static and unchanging, thereby ignoring the evolutionary aspects of all societies and cultures. They

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<sup>136</sup> Teson, F ‘International Human Rights and Cultural Relativism’ in Alston, P (ed) (1996) *Human Rights Law* 118.

<sup>137</sup> As above 119; see also Cerna (1994) 16 *Human Rights Quarterly* 740.

<sup>138</sup> Pollis, A ‘A New Universalism’ in Pollis, A & Schwab, P (eds) (2000) *Human Rights: New Perspectives, New Realities* 11.

<sup>139</sup> Mikell, G ‘Africa: The Domestic – Public Dichotomy’ in Mikell, G (ed) (1997) *African Feminism: The Politics of Survival in Sub-Saharan Africa* 7.

notoriously fuse nature and culture in their traditional conception of women's roles.<sup>140</sup> They use nature and reproductive roles of women to push them toward domestic activities, while men take up positions within the political sphere and decision-making. For the rigid relativists, women's rights are a nonissue since ostensible subordinate position of women is one aspect of traditional culture. Similarly the "extended family" in Africa undermines the legitimacy of individual rights particularly women's rights, which are viewed as a western import.

D Fox argues that women's struggles for human rights often position them in opposition to family and social networks where their roles and rights have been defined. However, because of the sanctity of the family, they choose not to seek empowerment and freedom, which sets them against their kin.<sup>141</sup>

#### 4.2.3 Finding a Common- Ground between Universalism and Relativism

Notwithstanding that every human being has the right to culture, including the right to enjoy and develop cultural life and identity,<sup>142</sup> the right to culture cannot be invoked to infringe other human rights and fundamental freedoms. Cultural rights do not justify discrimination of women on the grounds of sex.

There is a misconception among cultural relativists that traditional culture is sufficient to protect human dignity, and as such universal human rights are unnecessary. There is a need to go beyond this debate if the human rights of women are to be achieved. As Naima Hasci correctly points out:

The issue here is not about maintaining relativism as a dichotomy to universalism, but about integrating, adapting and building on what is universally human and gender-sensitive about a society's cultural and juridical heritage so that it can be genuinely sustained locally, nationally and internationally.<sup>143</sup>

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<sup>140</sup> As above.

<sup>141</sup> Fox, D 'Women's Human Rights in Africa: Beyond the Debate over the Universality or Relativity of Human Rights' *African Studies Quarterly: The Online Journal for African Studies* <<http://web.africa.ufl.edu/asq/v2/v2i3a2.htm>> (accessed on 18 September 2003).

<sup>142</sup> See common article 1(1) of ICCPR and International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted by the UN General Assembly on 16 December 1966, entered into force 3 January 1976.

<sup>143</sup> Quoted in Fox n 141 above.

For instance, where traditional culture does effectively protect human rights, it should be left to absorb and apply human rights, and the governing State should be in a better position not only to ratify, but also to effectively and fully implement the international standards.<sup>144</sup> However traditional culture should not be seen as a substitute for human rights, but rather as a cultural context in which human rights must be established, integrated, promoted and protected. In addition, traditional cultures should be approached and recognised as partners to promote greater respect for and observance of human rights.<sup>145</sup> By drawing on compatible practices and common values from traditional cultures would enhance and advance human rights promotion and protection.

From a feminist point of view, Oloka-Onyango and Tamale suggest a solution that lies in “intra-cultural and cross-cultural dialogue”, which recognises that “the personal is political, but the political is extremely rich and diverse.”<sup>146</sup> According to these scholars, such an approach encourages a dialogue which recognises the cultural assets and limitations on all sides, and which is inspired by the feminist consciousness that introduces the dialectic between the personal and the political. Similarly Abdullahi An-Na’im has embarked on a process of cross-cultural and internal cultural discourse, though his call for dialogue is somewhat one-sided in that he expects changes to take place primarily in the non-Western cultures.<sup>147</sup>

Mutua on the other hand is critical of adopting a purely Western notion of rights as attaching only to the atomised individual. He argues that in the West, the language of rights primarily developed along the trajectory of claims against the State, which imply the rights to seek an individual remedy for a wrong, whereas the African language of duty offers a different meaning for individual/State-Society relations.<sup>148</sup> Mutua points to the fact that in Africa while people had rights, they also bore duties. Hence the resolution of a claim was not necessarily directed at satisfying or remedying an individual wrong, rather it was an opportunity for society to contemplate the complex web of individual and community duties and rights to seek a balance between the competing claims of the

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<sup>144</sup> Ayton-Shenker n 134 above.

<sup>145</sup> As above.

<sup>146</sup> Oloka-Onyango & Tamale (1995) 17 *Human Rights Quarterly* 713.

<sup>147</sup> An-Na’im (1992).

<sup>148</sup> Mutua (1995) 35:39 *Virginia Journal of International Law* 340-341.

individual and society. Accordingly by understanding the ways in which traditional cultures protect the well being of their people, recognising and appreciating particular cultural contexts would go a long way in cultivating respect and observance of human rights.<sup>149</sup>

To move away from the impasse of universalism and relativism, there is a need to search for equivalencies between Western and non-Western philosophies and cultures. A recasting, free of ethnocentrism is essential, whereby elements from both theories can be merged and synthesized into a new reconstructed universalism.

### **4.3 Culture and Cultural Practices in Buganda**

#### **4.3.1 The position of women in the pre-colonial period**

The pre-colonial era can be classified as the period of pre-state formation. The state had not evolved into the present day modern state, where political power is categorised as the exercise of legislative, executive and administrative power. During this period, two types of political systems operated in Uganda.<sup>150</sup> Those were the centrally governed kingdom states such as Buganda and the non-state segmentary societies, which followed the clan system.<sup>151</sup>

The sexual division of labour during this period resulted in inequalities of power and social behaviour. Primarily agriculture was (and still is) the domain of women whereas hunting and the conduct of wars was the domain of men.<sup>152</sup> Women were considered men's possessions.<sup>153</sup> The husband had the power of life and death over his wife.<sup>154</sup> Roscoe illustrates this point by saying "the husband would not be punished if he killed his wife,"<sup>155</sup> but "if the husband was proved to have unjustly tortured or killed his wife, her relations would be satisfied with fining him."<sup>156</sup> In addition women became properties of men for clientalistic relations whereby the real purpose of women as gifts became

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<sup>149</sup> Ayton-Shenker n 134 above.

<sup>150</sup> Tamale (n 21 above) 4.

<sup>151</sup> As above.

<sup>152</sup> Jjuuko (1993) 2 *Journal of African Religion and Philosophy* 99.

<sup>153</sup> As above 101.

<sup>154</sup> As above.

<sup>155</sup> Quoted in Jjuuko as above.

<sup>156</sup> As above.

important for the political and social ladder.<sup>157</sup> For instance, every clan had women offered to the King and these women were trained on tactics of how to capture the heart of the King and attention in order to bear a child for the royal family.<sup>158</sup> The practice of Polygyny among the Baganda further reinforced the conception of women as tools for production.<sup>159</sup>

However, the prowess of women during this era cannot be underestimated at times of war. For instance, Kiguli points out to the heroic wife Nannono of King Nakibinge, who sharpened reeds for her husband when he ran out of spears to fight the Banyoro during the war between the Baganda and Banyoro.<sup>160</sup> On the other hand, Tamale alerts us to the power and influence possessed by divine-mediators, who could heal the sick, avert evil and predict war among other things.<sup>161</sup> In addition, she points out that because of their role in society, female mediators could politically mobilise the populace with ease.

It is conceded that although women did not directly participate in the political discourse, their opinions were valued and often sought before political decisions were taken.<sup>162</sup> This could be equated with what is regarded as indirect participation in public affairs in today's modern state. Jjuuko also echoes the same sentiments that clans in Buganda were at one time women-centred.<sup>163</sup> In support of that argument, he points out that the names of the clan heads and heads of clan divisions were female indicating matrilineality.<sup>164</sup> He further asserts that the grandmother was at one time head of a matrilineal clan.<sup>165</sup> It should be noted that during this period political power was mainly exercised through the heads of clans.<sup>166</sup>

Notably there is a general consensus among the aforesaid scholars that royal women wielded power beyond that of commoner men and women. These scholars point out that the Queen Mothers and classificatory sisters shared power with the King and even

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<sup>157</sup> Kiguli (n 6 above) 162.

<sup>158</sup> As above 163.

<sup>159</sup> Musisi, N (1991) 16 *Signs* 757-786.

<sup>160</sup> Kiguli (n 6 above) 158.

<sup>161</sup> Tamale (n 21 above) 6.

<sup>162</sup> As above 5.

<sup>163</sup> Jjuuko (n 152 above) 95.

<sup>164</sup> As above 108.

<sup>165</sup> As n 155 above.

<sup>166</sup> Sebina-Zziwa 'The Paradox of Tradition: Gender, Land and Inheritance Rights among the Baganda' (PHD Thesis 1998 University of Copenhagen) 37.

exercised judicial powers, collected taxes, and condemned their own people to death.<sup>167</sup> In addition royal women had access to government secrets, high status and were not allowed to marry any other man unlike commoner women.<sup>168</sup> We shall revert to this issue in the next chapter.

From the foregoing it becomes clear that the status of women was by no means equal to that of men. Although Jjuuko asserts that matriarchy existed at one time during this period, men dominated positions of political, economic and social power. Later kinship relations tilted the scales in favour of men through the evolution of patriarchy and the consolidation of the private/public divide within the Buganda society as will be seen in the subsequent eras.

#### **4.3.2 The position of women during the colonial period**

In 1894, the British took over Buganda as their territory and the king, Mwanga, the son of Mutesa I ruled indirectly.<sup>169</sup> It was during this period that the sexual division of labour became more defined.<sup>170</sup> Men came to occupy what is traditionally referred to as the public (political) sphere and women were relegated to the private (domestic) sphere. The introduction of capitalism further exacerbated the condition of women, whose production and reproduction roles within the society were exploited. Women were not paid for their productive and reproductive labour.<sup>171</sup>

The 1900 Buganda land Agreement created a new class structure, changes in state politics by reserving power for elite men and strengthening of gender hierarchy. The colonialists worked hand in hand with African patriarchs to develop inflexible customary laws, which evolved into new structures and forms of domination.<sup>172</sup> Men also tended to appeal to tradition in order to ensure that the rural areas did not result in any diminution of their control over women as economic assets.<sup>173</sup>

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<sup>167</sup> See Jjuuko (n 150 above) 106; Kiguli (n 6 above) 14 and Tamale (n 19 above) 6.

<sup>168</sup> Kiguli (n 6 above) 164.

<sup>169</sup> As above 172.

<sup>170</sup> Tamale (n 21 above) 7.

<sup>171</sup> As above 9.

<sup>172</sup> As above.

<sup>173</sup> Sebina-Zziwa (n 103 above) 31.

The British missionaries introduced the kind of education that further consolidated the public/private divide. The girls were taught to become good housewives, whereas boys were taught public sphere related subjects in order for them to later take up administration in the colonial state.<sup>174</sup>

By this time the power of royal women had been significantly reduced as was that of the king. Some land was taken away from them through the 1900 land Agreement. The office of Queen Mother lost validity, if the King lost the throne.<sup>175</sup> The composition of the Buganda Parliament (*Lukiiko*) changed to chiefs who were formerly pages and converts.<sup>176</sup> These chiefs had more powers than the royal family and could influence and make decisions irrespective of lack of royal titled positions, as was the case in the past.<sup>177</sup> It is noteworthy that chieftainship has always been the exclusive domain of men and as such the Buganda Parliament remained exclusively a male domain.

During 1953 – 1955 a conflict broke out between Buganda and the British over the future of Buganda kingdom and the King was deposed and sent into exile.<sup>178</sup> This culminated in women's political activism geared at protesting the deportation of the king.<sup>179</sup> The King was returned in 1955 and women came to be recognised as a political threat to the colonial government and male dominated politics. From then onwards women started to organize and mobilise to improve their lot within the colonial state. These women demanded to pay tax if that would make them achieve equality with men.<sup>180</sup> Later in 1957, Pumla Kisosonkole became the first African woman to enter the colonial Legislative Council (Legco), joining the British-born Barbara Saben.<sup>181</sup> The Legco elections of October 1958 resulted in both Saben and Kisosonkole being replaced by Joyce Mpanga, Sarah Ntiro and Frances Akello.<sup>182</sup> However, this was a hollow victory for women considering that all incumbents were not elected but appointed.<sup>183</sup> Only one woman had stood for the 1958 Legco elections as a candidate and had lost.

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<sup>174</sup> See Kiguli (n 6 above) 173-174; Tamale (n 21 above) 11.

<sup>175</sup> Kiguli (n 6 above) 182.

<sup>176</sup> As above 172.

<sup>177</sup> As above.

<sup>178</sup> Kiguli (n 6 above ) 183.

<sup>179</sup> As above 185; see also Tamale (n 21 above) 10.

<sup>180</sup> Kiguli (n 6 above) 187.

<sup>181</sup> Tamale (n 21 above) 10.

<sup>182</sup> As above.

<sup>183</sup> As above 11.

The Buganda *Lukiiko* elections of 1957 saw eight women standing for election. After vigorous campaigning, they were sabotaged by male county chiefs the evening before polling day. These chiefs urged the exclusively male electorate not to vote for women, alleging that the *Kabaka* (King) had proclaimed that it was not time yet for women to participate in politics.<sup>184</sup> Some of these women subsequently confronted the king, requesting him to be appointed to chieftaincy positions. The king in response told them that there were no such positions for women.

Clearly the King's response illustrated that within the Buganda cultural polity women were not equal to men and could not occupy certain political positions. Chieftainship arose from being head of a clan and clanship head took a patriarchal form. However in the 1962 pre-independence elections of the Buganda *Lukiiko*, Florence Lubega, daughter of former *Katikkiro* (prime minister) Wamala and Eseza Makumbi were elected into the *Lukiiko*.<sup>185</sup>

The election of the two women signified the awareness of women of the influence of the ballot and the structure of power in a male dominated political arena. This served as a tonic to the subsequent women activism as will be seen later. The election of these women had proved that women could also make a valued contribution in the political discourse when given a chance.

#### **4.3.3 The position of women in the post-independence era**

The dawn of independence in 1962, ushered full suffrage for both men and women. To the women this meant little since colonialism had defined their roles and alienated them from political structures. Colonial education had already defined the social stratification of the Ugandan society. Western concepts of democracy and social regulation had become entrenched.

Under President Milton Obote, women remained marginalized and the ruling party failed to take into account the fact that women had been continuously excluded from formal

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<sup>184</sup> As above.

<sup>185</sup> Kiguli (n 6 above) 188.

politics and hence needed special aid to ensure their election to positions of power.<sup>186</sup> Only two women out of a total number of 92 sat in the first post independence legislature.<sup>187</sup> Sugra Visram and Florence Lubega were both nominees of Kabaka Yeka (KY), the King of Buganda's party.<sup>188</sup>

Within the Buganda kingdom women were barred from being elected to the *Lukiiko*. This is discerned from the use of masculine language in Article 21. Article 21(1) of the 1962 Buganda Constitution provided:

A person shall be qualified for election as an elected member of the *Lukiiko* if he has the qualifications prescribed by the Constitution of Uganda for election as an elected member of the National Assembly (other than any qualification relating to the ability to speak English) and is not disqualified by or under that Constitution for election as a member.

In 1966, President Obote abolished the kingdom of Buganda along with Buganda's local government and traditional chiefs' court system, which concentrated power within the kingship.<sup>189</sup> During Obote's second tenure, women started to be appointed as sub-county chiefs.<sup>190</sup> Perhaps this could be attributed to his antagonism towards the Buganda kingship, which he had abrogated. It is during this period that women's organisations that had operated under cover started to resurface.<sup>191</sup> It should be noted that throughout independence until 1993, there is no analysis of the position of women in the Buganda kingdom due mainly to the fact that kingdoms had been abolished in 1966. It is safe to say that titled men and women throughout the ban on kingdoms only held titles but behaved like any other ordinary citizen of Uganda.

The coming to power of the NRM in 1986 saw the restoration of kingdoms in 1993. The Buganda kingdom was restored and the *Lukiiko* was reconstituted without any elections contrary to Article 20 of the Buganda Constitution of 1962, which provides that at least

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<sup>186</sup> Tamale (n 21 above) 15.

<sup>187</sup> As above.

<sup>188</sup> As above.

<sup>189</sup> Kiguli (n 6 above) 190.

<sup>190</sup> As above 192.

<sup>191</sup> As above.

68 members of the *Lukiiko* would be directly elected.<sup>192</sup> There is an apparent effort to amend the 1962 Constitution by a new constitution titled the “Constitution of Buganda under Federal Arrangement,” which formed the basis of the kingdom’s submissions to the Constituent Assembly deliberations in 1993.<sup>193</sup> Article 6(1)(b) of the proposed Constitution provide that the Lower House of the *Lukiiko* shall consist of 20 directly elected women representatives from each of the 20 *ssaza* (counties) of Buganda. It is important to note that notwithstanding the above, women will never achieve equal representation in the *Lukiiko* mainly because the majority of seats, 52 in number are reserved for the heads of Buganda’s 52 clans, and the latter position is the exclusive domain of men in terms of Article 4 of the amended Constitution. However there is an assertion that affirmative action as practiced in the Ugandan political structure is also replicated in the Buganda administrative structure.<sup>194</sup> For instance, there are 14 women members out of 79 members in the present Buganda *Lukiiko*.<sup>195</sup>

This small number of women in the *Lukiiko* clearly indicates that men have not waken up to the reality that women have an equal and meaningful role to play in the politics of the day. It is within these patriarchal societies that women are accused of lacking qualities of political leadership, because they are considered not aggressive enough, and hence are considered dependent upon government to allocate them special seats. It is against this background that Tripp alerts us to an incident in Bukosa, Kamuli, during the 1993 Constituent Assembly, were women heckled, booed and jeered the Member of Parliament, Dan Balawa for telling them not to vote for his opponent because she was a woman.<sup>196</sup> Not only is this an affront to the dignity of women but also a violation of their right to participate in public affairs, which includes the right to be represented by their “freely” chosen representatives.

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<sup>192</sup> Oloka-Onyango (n 7 above) 179.

<sup>193</sup> See ‘The Constitution of Buganda Under A Federal Arrangement’ <[http://www.federo.com/Pages/buganda\\_draft\\_constitution.htm](http://www.federo.com/Pages/buganda_draft_constitution.htm)> (accessed on 11 Oct 2003).

<sup>194</sup> Kiguli (n 6 above) 195.

<sup>195</sup> Buganda Executive Council – Cabinet <<http://www.buganda.com/cabinet.htm>> (accessed on 14 Oct 2003).

<sup>196</sup> Tripp, A M ‘Gender and Institutional Analysis’ in Tripp, A M & Kwesiga, J C (eds) (2002) *The Women’s Movement in Uganda History, Challenges and Prospects* 219.

## 4.4 Cultural Practices in Swaziland

### 4.4.1 The traditional Sexual-Division of Labour

The sexual-division of labour in Swaziland like anywhere else is characterised by the public/private divide. The ideology of traditionalism, which is pervasive in every aspect of Swazi life, particularly affects the status of women. Through the dual nature of the legal system, where customary law reign supreme, women are given subordinate status to men. Generally men are seen as the anointed to exercise power within the public sphere, whereas women are relegated to the private sphere of home and family. It is in the rural areas where this division of labour is more rigid. Seventy (70) percent of Swazis out of a population of about one million, live in the rural areas and in practice are governed by the traditional system, which upholds patriarchy.<sup>197</sup> Women are traditionally responsible for keeping the home and raising children, as such they may not have enough time or energy to devote to politics.<sup>198</sup> Women are also often the custodians of culture and are trained to be submissive and it may be very difficult for them to enter politics.

Swazi customs and traditions require women to kneel when addressing men. This custom is applied to all women without exception. For instance it was reported that during the run up to Swaziland's 1998 general elections, women parliamentary candidates were expected to kneel when addressing gatherings attended by chiefs and men.<sup>199</sup> This clearly illustrates the inferior status of women in the Swazi society. To rub salt into the wound, the Returning Officer for the elections was quoted as saying that it is custom that the women parliamentary candidates should kneel when addressing such gatherings.<sup>200</sup> This custom is degrading to women because it does not apply to men when addressing women, let alone the status of the woman being so addressed by men. It is its discriminatory nature, which is an affront to the human dignity of women. Custom also dictates that women wear a headscarf when addressing such meetings.

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<sup>197</sup> Barrett, J 'Culture: Codification of Customs in Swaziland'  
<[http://www.oneworld.org/ips2/nov98/10\\_13\\_021.html](http://www.oneworld.org/ips2/nov98/10_13_021.html)> (accessed on 7 Oct 2003).

<sup>198</sup> See Kuper (1947) 129.

<sup>199</sup> Inter Press Service 'Women Fight Age-Old Sexism'  
<[http://www.swazineews.co.sz/stories/15oct\\_women.htm](http://www.swazineews.co.sz/stories/15oct_women.htm)> (accessed on 1 Oct 2003).

<sup>200</sup> As above.

Election to public office is supposed to be a prestigious honour, which carries along with it respect and dignity. Such an election should also take place in a context of a level political field in conformity with equality and democracy. However subjecting women candidates to such a humiliating exercise does not only violate their dignity but also jeopardize their chances of being taken seriously by their constituencies, especially men.

#### 4.4.2 The Institution of Marriage

Within Swazi society girls and unmarried women are regarded as temporary members of their families until they are married. Once married, they become inferior members of their husbands' families.<sup>201</sup> Husbands wield absolute power over their wives and must grant their permission from everything to whether a woman can work to whether she can acquire a passport.<sup>202</sup> By implication a married woman seeking to vote or stand for election must obtain the permission of her husband. The husband may also instruct her to vote for a certain candidate. Single women do not fair better either, since they are most likely to be excluded politically in Swaziland. In Swazi culture it is married women who are taken more seriously in their communities.<sup>203</sup> The practice of Polygyny in Swaziland could not have put women in a better position either. Although Kuper asserts that the ideal homestead in Swazi society is polygynous, for the most part only aristocrats and wealthy, elderly commoners attained Polygyny.<sup>204</sup> In an interview with a high-ranking Swazi official it was revealed that Polygyny in the royal family is essential to ensure that there is always an heir to the throne.<sup>205</sup> This practice was as recently as last year, challenged in the Swaziland High Court albeit unsuccessfully by Lindiwe Dlamini, whose daughter Zena Mahlangu was abducted by the king's servants to add to his ever-growing number of wives. Later, when Zena Mahlangu appeared in public alongside King Mswati III as an official fiancée, Lindiwe Dlamini knew that her efforts were futile as the King was not going to let her daughter go.<sup>206</sup> She then decided to abandon the case. The case had brought to light the situation with regard to women's rights in Swaziland

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201 Barrett n 197 above.

202 As above.

203 As above.

204 Kuper (n 198 above) 37.

205 As n 126 above.

206 Swazi polygamy under spotlight <<http://news.bbc.co.uk/1/hi/world/africa/2489015.stm>> (accessed on 23 October 2003).

and made some of the most ardent supporters of the King ask serious questions about the monarchy.

#### 4.4.3 Widowhood

Widowhood is supposed to be a period of solidarity, companionship and sympathy for the bereaved, however in Swaziland, widowhood is a traumatic experience for widows. Not only are they ostracised from society but they are also deprived of property and disenfranchised.

Widows are required to mourn for a period of two years whereas widowers mourn for one month only.<sup>207</sup> This differential or discriminatory practice has no justification, except that it serve to reinforce patriarchy in the Swazi society. Widows are also compelled to wear black mourning outfits to alert the public of their bereaved status and also in order that certain traditional authorities like the King can avoid them.<sup>208</sup> The reason for this is that widowhood is associated with bad luck and widows are considered unclean until they undergo cleansing rituals.<sup>209</sup>

Widows are not allowed to enter royal residences, or areas where the royals visit. These areas include the Houses of Parliament and the homestead of any chief.<sup>210</sup> Since voting takes place in the chiefs' homesteads, widows are by implication or consequence not permitted to cast their votes. It was also reported that widows who have been bereaved within the past two years have been banned from running as candidates in this year's Parliamentary elections scheduled for October.<sup>211</sup>

This is a deprivation of the widows of one of their fundamental human rights, more so because there is no provision for absentee ballots for them, as they are obliged to stay at home. This serves to perpetuate gender imbalance in political representation,

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<sup>207</sup> As n 199 above.

<sup>208</sup> Hall, J 'Women Battle with Culture in Order to Fight Aids'  
<<http://www.globalpolicy.org/socecon/inequal/2003/0909swaziland.htm>> (accessed on 29 Sept 2003).

<sup>209</sup> Hlanze & Mkhabela (1998) 30.

<sup>210</sup> Hall n 208 above.

<sup>211</sup> Swaziland: Widows banned from being Election Candidates  
<<http://www.aegis.com/news/irin/2003/IR030311.html>> (accessed on 29 Jul 2003).

considering that at present only four out of 65 MPs are women.<sup>212</sup> Furthermore, a candidate running against a recent widow could have her disqualified until her two-year mourning period is over.<sup>213</sup> It is contended that the only person who can order widows to remove their mourning gowns and be allowed to participate in the elections is the King. It is also alleged that the King did this in 1998 to allow widows to participate in the combined celebration of his 30<sup>th</sup> birthday and the 30<sup>th</sup> anniversary of independence.<sup>214</sup>

It is only proper for the King to do likewise in the case of a general election, since a general election is a national interest more important than a royal birthday celebration. I personally do not see why the king cannot allow widows to participate in public affairs, if he really has the interests of all the Swazis at heart and is committed to upholding human rights.

#### **4.5 Conclusion and Findings**

Having attempted to define culture in the foregoing chapter, the next step was to explore the debate on cultural relativism and the universality of human rights. An analysis of such a debate has revealed that cultural relativism cannot be invoked to violate other human rights; hence the universality of human rights remains the legal standard upon which the promotion and protection of human rights can be fully achieved. Going beyond the debate on cultural relativism and the universality of human rights, a review of different views of scholars across the spectrum including feminists, have demonstrated that a common ground can be achieved between the proponents of the two divergent ideologies.

Turning to cultural practices in Buganda and Swaziland, the chapter has revealed that there are certain cultural practices that impede the right of women to participate in public affairs. For instance, in Buganda throughout the period from precolonialism until the coming into power of the NRM/A government, the sexual division of labour, the traditional clanship power base and the gender stereotypes about women's roles in society have contributed to the paucity of women in the public sphere of politics. This

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<sup>212</sup> As above.

<sup>213</sup> See also Swaziland: Widows banned from being Election Candidates  
<<http://www.africaonline.com/site/Articles/1,3,52414.jsp>> (accessed on 7 Oct 2003).

<sup>214</sup> As above.

paucity of women in politics in both kingdoms may also be due to a combination of structural and situational difficulties women face. For example women's multiple social roles, which consume much of their time and energy, inadequate money capital to invest in the election campaign, a low level of interest in politics at the national level and the lack of support from interest groups such as women's organizations. All these factors cannot be divorced from the social stratification and the division of labour in both kingdoms. In addition the practice of giving women away as gifts to the kingship and Polygyny during the pre-colonial era, further reduced the status of women and hampered their participation in the public sphere, since women were not considered as autonomous beings but the properties of their husbands. It is against this background that women could not assert their influence in the public sphere.

In the case of Swaziland, in addition to the traditional division of labour, the gender stereotypes prevalent in that society, the chapter has identified certain customs which not only violate the human dignity of women but also deny them the right to participate in public affairs. For instance the institution of marriage holds women in bondage to their husbands who literally have control over their lives and their right to franchise. The custom of widowhood or mourning has proved to be a major affront to the human rights of women including their right to participate in public affairs. The custom which requires women to kneel when addressing men dehumanise, belittle, reduces the esteem of women and jeopardize their chances of being elected by their constituencies. Although the same custom exists in Buganda it is confined to private relations and has no impact on the right of women to participate in public affairs.

Finally the type of education made accessible to women in both kingdoms has proved to be inappropriate and /or inadequate to equip them with the necessary skills to enable them to participate equally with men in the exercise of power in the public sphere of politics.

## CHAPTER 5

### 5.0 THE ROLE OF ROYAL WOMEN IN BUGANDA AND SWAZILAND

#### 5.1 Introduction

This chapter does not seek to cover the roles of all royal women in both kingdoms, but rather will focus on those women who had tangible powers or otherwise had significant influence in the political/royal discourse in both kingdoms.

#### 5.2 Royal Women in Buganda

##### 5.2.1 The Queen Mother (*Namasole*)

The Queen Mother is traditionally one of the three persons who could be referred to as *Kabaka*, the others being the King and the Queen Sister (*Lubuga*).<sup>215</sup> She had her own palace on a hill separated from the King's palace by a stream for it is said that according to Ganda tradition, two kings could not occupy the same hill. She was considered superior to all other chiefs and was the most powerful commoner, being a royal only by marriage.<sup>216</sup> However, she was a lesser King compared to her son.<sup>217</sup> This shows that in Buganda society commoner women could have their status elevated when married into royalty. It was also through the Queen Mother that other commoner women could be emancipated. For example, the sister of the Queen Mother became the royal midwife and assumed the title of *Nabikande*.<sup>218</sup> Schiller on the other hand, puts the number of the Queen Mother's sisters who assumed the title of midwives at two.<sup>219</sup>

The Queen Mother held a concrete office with tangible power and prerogative. She held her court apart from the king and had the power of life and death over her own people.<sup>220</sup> She also collected her own taxes through her representatives and was herself exempt

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<sup>215</sup> Schiller (1990) 23 *The International Journal of African Historical Studies* 458; see also Jjuuko (n 152 above) 106 and Kiguli (n 6 above) 239.

<sup>216</sup> Schiller as above 459.

<sup>217</sup> Kiguli as n 215 above.

<sup>218</sup> Kiguli (n 6 above) 242.

<sup>219</sup> Schiller (n 215 above) 460.

<sup>220</sup> Schiller as n 216 above; see also Jjuuko as n 215 above.

from taxation.<sup>221</sup> She appointed her own chiefs with titles and structures similar to that of the King.<sup>222</sup> Although the Queen Mother wielded considerable power, such was limited. For example, she could not order the King's men to do tasks for her.<sup>223</sup>

In the Ganda tradition it was always imperative to have a Queen Mother because it was feared that if a King had no mother, he would be a cruel King.<sup>224</sup> She was expected to be a restraining influence on the King.<sup>225</sup> She also provided a link between the King and his support group. For instance, one of her brothers became uncle to the nation (*Ssabaganzi*).<sup>226</sup> She could also play an important role as an advisor to the King depending on her personality. For example, Schiller alerts us to the mother of *Mutesa I*, who was responsible for convincing him to dismiss his second Prime Minister (*Katikkiro*) and helped block the appointment of another.<sup>227</sup> In Buganda the office of the Queen Mother is hereditary and if the biological mother is dead, a Queen Mother is appointed from her clan to replace her.<sup>228</sup>

Notably the Queen Mother could also not escape the dictates of patriarchy. For instance, she was also not expected to remarry after the death of her husband because tradition dictates that she owed the late King respect, alternatively she is a King and cannot remarry a lesser man than herself.<sup>229</sup> However, she was allowed to have lovers but no children.<sup>230</sup> This illustrates that patriarchy not only controlled the status of women but also controlled their reproductive rights and their rights to freedom of association.

In contrast the powers that the Queen Mother held in the past are said to be slowly fading, hence today she remains a cultural identity with limited powers.<sup>231</sup> Kiguli also points out that the present Buganda has an appointive Queen Mother.

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221 As above.  
222 Schiller as n 216 above.  
223 As n 219 above; see also Kiguli (n 6 above) 239.  
224 As n 218 above.  
225 Schiller (n 215 above) 461.  
226 As n 218 & n 219 above.  
227 Schiller (n 215 above) 463.  
228 Schiller as n 215 above; see also Kiguli (n 6 above) 241.  
229 Kiguli (n 6 above) 240.  
230 As n 216 above.  
231 Kiguli as n 215 above.

### 5.2.2 The Queen Sister (*Lubuga*)

The Queen Sister also held the title of *Kabaka*, shared power with the heir and stood together with him on a bark cloth at the installation ceremony.<sup>232</sup> She was a half-sister of the King from one of the late King's sonless wives, ensuring that she would not use her position to support a rival (i.e. her brother) to the throne.<sup>233</sup> The *Lubuga* acted as queen to the King at coronation and they were carried together by the Buffalo clansmen to Budo hill, the site of their installation.<sup>234</sup> They went through the ceremonies together and both took an oath to protect their people and rule them well. However the *Lubuga* acted as a ritual not a real wife to the King and as such was not expected to have sex with the King neither was she allowed to have children.<sup>235</sup> Roscoe asserts that if she got pregnant she might be deposed or even put to death.<sup>236</sup>

The *Lubuga* appointed her own chiefs and also had the power of life and death over her subordinates.<sup>237</sup> She also collected her own taxes and was also exempted from taxation.<sup>238</sup> Although she could exercise influence over the King, hers was not equal to that of *Namasole* (Queen Mother).<sup>239</sup> Any rituals that had to take place had to be approved by her.<sup>240</sup> At the death of the King her title changed to *Nalinya* ("King of the dead") and she became the chief female guardian of the royal tomb.<sup>241</sup> If she predeceased the King, she was buried near the tomb of her father and a young princess took over her title of *Lubuga*.<sup>242</sup>

There seems to be a consensus among the cited scholars about the role and powers of the *Lubuga*. However it is noteworthy that she was a lesser King than the other two kings. Kiguli points out that today, besides appearing at important functions, not much is said about her.<sup>243</sup> This indicates that the powers of the *Lubuga* may have been eroded through the evolution of time or either with the consolidation of patriarchy in the Buganda

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<sup>232</sup> Kiguli (n 6 above) 243; see also Schiller (n 215 above) 465.

<sup>233</sup> Schiller as above 463.

<sup>234</sup> As above.

<sup>235</sup> Schiller as n 219 above.

<sup>236</sup> Quoted in Schiller as n 220 above.

<sup>237</sup> As above; see also Jjuuko n 152 above.

<sup>238</sup> As above.

<sup>239</sup> Schiller (n 215 above) 464.

<sup>240</sup> Kiguli (n 6 above) 245.

<sup>241</sup> As above; see also n 226 above.

<sup>242</sup> As n 226 above.

<sup>243</sup> As n 227 above.

society. Unlike the *Namasole* the *Lubuga* did not provide a link with the King's support group and that could have also contributed to the reduction of her powers.

### 5.3 Royal Women in Swaziland

#### 5.3.1 The Queen Mother (*Indlovukazi*)

The Queen Mother is chosen first before the King (*Ingwenyama*) is chosen, since there are no crown princes in Swazi tradition.<sup>244</sup> Her palace is regarded as the spiritual home of the nation and the Swazi National Council (SNC) meetings are held there. According to Hansungule, the Queen Mother is a *de facto* head of state, because "to this day is known to be exercising sovereign powers together with her son."<sup>245</sup> There is also a delicate balance of powers, legal, economic and ritual between *Indlovukazi* and *Ingwenyama*.<sup>246</sup> Formerly she presided over the second highest court before Swazi state formation and her counselors could take part in the deliberations at her son's court.<sup>247</sup>

Whilst the King controlled the entire army, the commander-in-chief resided at the Queen Mother's village.<sup>248</sup> She also had the regiments stationed at the capital under the leadership of princes.<sup>249</sup> She also took active and prominent part in governmental affairs.<sup>250</sup> She is regarded as the mother of the nation and has the custody of the rain-making medicines.<sup>251</sup> The Queen Mother had (still has) restraining influence on the King and could (still can) rebuke him if he wasted national wealth.<sup>252</sup> In all activities the King and the Queen Mother had to assist and advise each other, for he is *Inkosi* (King) and she is also *Inkosi* (King).<sup>253</sup>

It should be noted though, that efforts to modernize the traditional Swazi state in the early 1980s, generated a crisis that resulted in the retention of power in the hands of the King and his Advisory Council, and the subversion of power previously held by the

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<sup>244</sup> As n 126 above; see also Hansungule, M (2003) Discussion Paper presented at Lund University, Sweden on 26 February 2003 24.

<sup>245</sup> Hansungule as above.

<sup>246</sup> Kuper (n 198 above) 54.

<sup>247</sup> As above.

<sup>248</sup> As above.

<sup>249</sup> Kuper (n 198 above) 55.

<sup>250</sup> Marwick (1940) 6 & 226.

<sup>251</sup> As above at 227.

<sup>252</sup> As n 249 above; see also Kuper (1952) 35.

<sup>253</sup> As n 249 above.

Queen Mother.<sup>254</sup> Consequently the powers of *Indlovukazi* have been reduced to those of advisory role to *Ingwenyama* and ritual figure.

### 5.3.2 Princess of the Country (*Lakosa ta nyelive*)

In Swazi tradition the most important princesses were married off to foreign rulers and important chiefs.<sup>255</sup> This was done to strengthen the King's link with his support group and the princesses served as useful informants on local politics and interests.<sup>256</sup> The King's full sister was considered next in rank to the *Indlovukazi*, hence if there was no full sister a half-sister was selected for the position of honour.<sup>257</sup> The *Lakosa ta nyelive* had a say in the council that chose an heir to the kingship on her father's death.<sup>258</sup> The King's (her brother) children regarded her as the "female father" with marked respect and her own children were equal to those of the King.<sup>259</sup>

She however, took little active part in the central government, since princesses lived away from the capital upon marriage. Unlike princes, they did not attend the court, neither were they summoned for national discussions.<sup>260</sup>

## 5.4 Summary

An analysis of the role of royal women revealed that in both kingdoms Queen Mothers played an important role in the body politic. In both cases it was revealed that the Queen Mothers provided a vital link between the Kings and their support groups. In Buganda, in particular commoner women related to the Queen Mother could have their status elevated by being appointed royal midwives. It also came to light that the Queen Sister (*Lubuga*) in Buganda also wielded power and was also regarded as King (*Kabaka*). In Swaziland, it was found that the role of the Princess of the Country (*Lakosa ta nyelive*) was ritual with no tangible powers. In conclusion, it was revealed that generally women within both societies could have their status elevated by either being born or married into the royal family.

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<sup>254</sup> See Kuper 1986.

<sup>255</sup> Kuper (n 198 above) 58.

<sup>256</sup> As above.

<sup>257</sup> Kuper (n 198 above) 59.

<sup>258</sup> As above.

<sup>259</sup> As above.

<sup>260</sup> As above.

## CHAPTER 6

### 6.0 CONCLUSIONS AND RECOMMENDATIONS

#### 6.1 Conclusions

The right to participate in public affairs is a fundamental human right guaranteed at regional and international level, and must be enjoyed by everyone without any distinction. Moreover it is the duty of states, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms.<sup>261</sup> The fact that Uganda has not ratified the Optional Protocol to CEDAW, which facilitates the submission of individual complaints to the CEDAW Committee, makes it cumbersome for women to enforce their rights under CEDAW's structures. Similarly Swaziland has neither ratified the ICCPR nor CEDAW, including its Optional Protocol. This state of affairs is not conducive to the realization of human rights, let alone women's human rights in Swaziland. At regional level, both Uganda and Swaziland are yet to ratify the Additional Protocol to the African Charter on the Rights of Women. This factor also does not augur well for the promotion and protection of women's human rights

Whilst appreciating that women's rights are guaranteed in the Ugandan Constitution, Swaziland is yet to adopt its Draft Constitution. Although recently there has been an outcry about the Swazi Draft Constitution, in principle pressure groups are not opposed to it, but rather are opposed to the fact that the monarchy seems to be above the constitution.<sup>262</sup> They are in essence agitating for a constitutional monarchy where the king is also bound by the constitution.

The current compositions of the Buganda and Swazi Parliaments deny women equal representation. Although section 87 of the Swazi Draft Constitution proposes some measure of affirmative action, it falls short of guaranteeing equal representation. On the other hand, neither the Buganda Constitution of 1962 nor the proposed Federal Constitution makes any provision for affirmative action contrary to the Constitution of the Republic of Uganda. Similarly the appointment system practiced in both kingdoms is an affront to democracy and violates the right to participate in public affairs.

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<sup>261</sup> As n 133 above.

<sup>262</sup> Swaziland: Rising concern over draft Constitution as day of decree approaches  
<<http://www.irinnews.org/report.asp?ReportID=36850.html>> (accessed on 20 October 2003).

This study has demonstrated that within traditional African polities, women's roles and statuses often display numerous contradictions, partly reflecting the disjuncture with other political, economic and social processes. It is within these patriarchal societies that women now seek to bring their domestic and public roles into some coherent alignment. Unfortunately for women culture still remains an obstacle to their aspirations. Culture is a reality everywhere. However, it can no longer be invoked to deny women their human rights. In general, male patriarchs have resisted pressures to involve women in political decision-making, partly because they reject the legitimate right of women to public involvement. Such a rejection fosters gender inequality and harms the prospects of women's participation in public affairs.

The debate over cultural relativism and the universality of human rights can no longer be sustained at the expense of women's human rights. Indeed, this study has proved that a common ground can be achieved in the interest of human dignity and equality. Cultural practices that deny women their human dignity and assign them inferior status in Buganda and Swaziland are violations of human rights and cannot be justified. Similarly, the differential treatment accorded to royal women at the expense of commoner women, violates women's right to equality.

## **6.2 Recommendations**

It is recommended that Swaziland adopt its Draft Constitution as a matter of urgency and ensure that no one is above the constitution including the monarchy. Swaziland is also implored to ratify CEDAW and its Optional Protocol, the ICCPR and its Protocols, as well as the Protocol to the African Charter on the Rights of Women. In addition, Swaziland and Buganda should strive to harmonise their cultures and customs to conform to accepted human rights norms and standards. Uganda is also implored to ratify the Optional Protocol to CEDAW and the Protocol to the African Charter on the Rights of Women. These recommendations are at least minimum measures that can be taken by the two countries to facilitate the full realisation of human rights within their territories.

To women's rights activists in Buganda and Swaziland, and elsewhere in patriarchal societies, the following strategies are recommended:

- i. Activists should coordinate women's organizations and lobby groups so that their voices can be heard loud and clear in an organised manner.
- ii. Women need to transform their numerical power into real power through collaboration among themselves to achieve a common purpose, given that in almost every society they are the majority.
- iii. Women in positions of power should strive to promote gender awareness and sensitisation through teachings and civic education among their peers.
- iv. There is also a need to create support structures for women's multiple roles in society. Men should be made aware of the necessity for them also to take part in the nurturing and upbringing of children. Institutions of day care like nurseries and crèches should be established to enable women to play active part in the public sphere.
- v. Leadership abilities of women should be highlighted, by projecting personal profiles of distinguished women in public life. This will encourage other women to believe in themselves and follow the examples of their role models.
- vi. Activists in civic positions should use such positions to train and recruit other women for national politics.
- vii. Women may also consider women-controlled political parties, since experience has proved that men dominate most political parties.
- viii. It is also essential that women should start networking and building alliances with gender-sensitive men.
- ix. Women are implored to pursue legal strategies aimed at legal reforms by challenging the roots of patriarchy within competent judicial institutions like national courts and human rights monitoring bodies.

Finally, to the Kings in Buganda and Swaziland, and elsewhere, it is imperative that women be involved and given equal opportunity with men in traditional structures of public governance. Monarchs should strive to modify their cultures and customs to recognize the inherent dignity of women and their right to equality.

**Word Count = 18 000 words**

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